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Attorneys for Defendants
BUTA UPPAL and CANADA ROAD CARRIER, LTD

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

VIRIDIANA CAMACHO and
JIMENA DEL ANGEL, a minor by and
through his GAL ADAN DEL ANGEL
NERIS,

Plaintiffs,

v.

BUTA UPPAL, CANADA ROAD
CARRIER, LTD and DOES 1 to 50,
inclusive,

Defendants.

CASE NO.

Monterey Superior Court Case No.
20CV002010

**DEFENDANTS' NOTICE OF
REMOVAL PURSUANT TO 28
U.S.C. SECTION 1441(b)
(DIVERSITY)**

DEMAND FOR JURY TRIAL

Filed concurrently with Declaration of
Counsel]

Sup. Ct. Comp. Filed: July 29, 2020
Trial Date: None Set

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendants BUTA UPPAL and CANADA ROAD CARRIER, LTD. ("Defendants"), by and through their counsel GORDON REES SCULLY MANSUKHANI LLP, hereby remove to this court, pursuant to 28 U.S.C. Sections 1331, 1441, and 1446, based on diversity jurisdiction, the claims pending as Case No. 20CV002010 of the Superior Court of California, County of Monterey. In support of this removal, Defendants state as follows:

I. THE REMOVED CASE

1. The removed case is a civil action commenced in the Superior Court of California, County of Monterey by Plaintiffs VIRIDIANA CAMACHO and JIMENA DEL ANGEL, a minor by and through his Guardian Ad Litem ADAN DEL ANGEL NERIS, (“Plaintiffs”), against Defendants entitled *Viridiana Camacho, et al. v. Buta Uppal, et al*, Case No. 20CV002010 (the “State Action”). The two named Defendants are BUTA UPPAL and CANADA ROAD CARRIER, LTD. (*See* Declaration of Counsel (“Counsel Decl.”), Exh. A.)

2. Plaintiffs initiated the State Action on July 29, 2020. Plaintiffs’ unverified complaint asserts personal injury claims, including two (2) causes of action for Negligence and Negligence Per Say against all Defendants, arising out of an alleged vehicle collision that occurred on July 30, 2018, wherein Plaintiff suffered injuries. (Counsel Declaration, ¶ 2, Exh. A, filed concurrently herewith.) Plaintiffs further allege two additional causes of action, Negligent Entrustment and Negligent Hiring, Supervision and Training, against Canada Road Carrier, Ltd. (*See* Counsel Decl., ¶ 2, Exh. A.)

3. Plaintiffs seek damages for (1) past and future medical services; (2) property and other general and special damages; (3) costs of suit; 4) pre- and post-judgment interest; and (5) other relief as the Court deems just and proper. (*Id.*)

4. Defendant Buta Uppal was served with summons on August 12, 2021. Defendant Canada Road Carrier, Ltd was served with summons on August 10, 2021. Answers were filed on October 25, 2021, and the matter is currently pending in the Monterey County Superior Court. (Counsel Declaration, ¶ 3, Exh. B.)

II. PROCEDURAL REQUIREMENTS

5. Generally, a defendant has thirty (30) days from the date of service of

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1 a copy of the Complaint to remove a case. (28 U.S.C. § 1446(b).) However,
2 when an action is not initially removable on its face, a defendant has thirty (30)
3 days to remove the case to Federal Court after receiving a copy of “other paper
4 from which it may first be ascertained” that the case is or has become
5 removable. (*Id.*) Plaintiffs filed their Complaint on July 29, 2020. (*See Compl.,*
6 *generally.*)

7 6. Defendants’ counsel served Requests for Statement of Damages to
8 Plaintiffs on October 15, 2021. Plaintiffs’ counsel’s office forwarded copies of
9 Plaintiffs’ statement of damages on November 2, 2021, first providing counsel
10 with sufficient information on the amount in controversy. According to
11 Plaintiffs’ statement of damages, however, show each Plaintiffs’ claimed
12 damages were well in excess of \$75,000. Attached as Exhibit C are true and
13 correct copies of Plaintiffs’ statements of damages. (Counsel Declaration, ¶ 5,
14 Exh. C.)

15 7. Pursuant to Fed. R. Civ. Pro. 6(a), a period of greater than 30 days
16 since November 2, 2021 has not elapsed. Accordingly, this Notice of Removal
17 is therefore timely filed.

18 8. Pursuant to 28 U.S.C. Section 1446(a), copies of all process,
19 pleadings, and orders for the State Action in Defendants’ possession are
20 contained in **Exhibits F** to the Counsel Declaration filed herewith.

21 9. Pursuant to 28 U.S.C. Section 1446(a), venue is proper in the
22 Northern District of California because this district embraces the place in which
23 the State Action has been pending.

24 10. Pursuant to 28 U.S.C. Section 1446(d), a true and correct copy of this
25 Notice of Removal will be filed with the Superior Court of California, County
26 of Monterey promptly after filing of same in this Court.

27 11. Pursuant to 28 U.S.C. Section 1446(d), written notice of filing of this
28 Notice of Removal will be given to all adverse parties promptly after the filing

1 of same in this Court.

2 12. If any question arises as to the propriety of the removal of this
3 action, Defendants request the opportunity to conduct discovery, brief any
4 disputed issues and to present oral argument in favor of their position that this
5 case is properly removable.

6 13. Nothing in this Notice of Removal shall be interpreted as a waiver or
7 relinquishment of Defendants' right to assert defenses including, without
8 limitation, the defenses of (i) lack of jurisdiction over person, (ii) improper
9 venue and/or *forum non conveniens*, (iii) insufficiency of process, (iv)
10 insufficiency of service of process, (v) improper joinder of claims and/or
11 parties, (vi) failure to state a claim, (vii) failure to join indispensable party(ies),
12 or (viii) any other procedural or substantive defense available under state or
13 federal law.

14 **III. JURISDICTION: COMPLETE DIVERSITY REQUIREMENT MET**

15 14. This is a civil action over which this Court has original jurisdiction
16 pursuant to 7 U.S.C. Section 1332. This case may be removed to this Court by
17 Defendants pursuant to 28 U.S.C. Section 1441(b) because it is a case that
18 could have been commenced in federal court based on diversity of citizenship.
19 The Plaintiffs' state of residence (much less country) is different from
20 Defendants', and the amount in controversy exceeds \$75,000. (Counsel
21 Declaration, ¶¶ 5-8.) (See *Exxon Mobil Corp. v. Allapattah Svcs., Inc.* (2005)
22 545 U.S. 546, 549 [holding that 28 U.S.C. § 1367 authorizes supplemental
23 jurisdiction over the claims of the other plaintiffs in the same Article III case or
24 controversy, even if those claims are for less than the jurisdictional amount,
25 where at least one named plaintiff in the action satisfies the amount-in-
26 controversy requirement].)

27 15. At all relevant times, Defendant Canada Road Carrier, Ltd was
28 incorporated in British Columbia, Canada, with its principal place of Surrey,

1 British Columbia, Canada as registered with the United States Department of
2 Transportation. Defendant Canada Road Carrier, Ltd.'s corporate headquarters
3 were also located in Surrey, British Columbia, Canada, where its corporate
4 officers and senior management direct, control and coordinate its business. (*See*
5 *Hertz Corp. v. Friend* 559 U.S. 77, 80-81, 92-93 (2010) [For the 'nerve center'
6 test, the "nerve center" is at the corporate headquarters, "provided that the
7 headquarters is the actual center of direction, control, and coordination"].) (*See*
8 Counsel Decl., ¶ 6.)

9 16. At the time of the subject incident, the Traffic Collision Report
10 advised Mr. Uppal resided at 11762 75A Ave., Delta, British Columbia, Canada
11 V4C1J5. Mr. Uppal was then served at 12469 66A Ave. in Surrey, British
12 Columbia, Canada. I am further informed and believe that Mr. Uppal is not,
13 and has never been during all relevant time periods, a resident of the state of
14 California. (*See* Counsel Decl., ¶ 7.)

15 17. As outlined in the Traffic Collision Report provided to my office and
16 as alleged in Plaintiffs' operative complaint, Plaintiffs are listed as residents of
17 the state of California. (*See* Counsel Decl., ¶ 8, Exh. D.)

18 18. Moreover, the amount in controversy exceeds the requisite \$75,000
19 limit by a preponderance of the evidence, pursuant to 28 U.S.C. Section 1332.
20 (*See Sanchez v. Monumental Life Ins. Co.* 102 F.3d 398, 404 [The amount in
21 controversy must be proven by a preponderance of the evidence. "Under this
22 burden, the defendant must provide evidence establishing that it is more likely
23 than not' that the amount in controversy exceeds that amount."]) As this case is
24 still in its preliminary stages, Defendants have not been able to conduct formal
25 discovery.

26 **IV. INTRA-DISTRICT ASSIGNMENT**

27 19. The state court action was filed in Monterey County, which serves as
28 the basis for assignment to the San Jose Division of the United States District

1 Court, Northern District of California, pursuant to Local Rule 3.2(e). (Counsel
2 Declaration, ¶ 9.)

3 **V. NOTICE TO PLAINTIFF AND STATE COURT**

4 20. Immediately following the filing of this notice of removal of action,
5 written notice of this filing will be served on Plaintiffs and will be filed with the
6 Clerk of the Superior Court for the County of Monterey, in accordance with 28
7 U.S.C. Section 1446(d). (Counsel Decl., ¶ 10, Exh. E.)

8 **VI. DEMAND FOR JURY TRIAL AND NON-WAIVER OF DEFENSES**

9 21. Defendants demand a jury trial.

10 22. Defendants submit this Notice of Removal without waiving any
11 defenses to the claims asserted by Plaintiffs, or any counterclaims, and without
12 conceding that Plaintiffs have pled claims upon which relief can be granted.

13 **VII. CONCLUSION**

14 23. Consequently, the State Action may be removed to this Court by
15 Defendants' Buta Uppal and Canada Road Carrier, Ltd in accordance with the
16 provisions of 28 U.S.C. Section 1441 because: (i) this action is a civil action
17 pending within the jurisdiction of the United States District Court for the
18 Northern District of California and (ii) the action involves complete diversity
19 between all named plaintiffs and defendants and damages in excess of \$75,000.

20
21 Dated: November 22, 2021 GORDON REES SCULLY MANSUKHANI, LLP

22 /s/ David A. Serrano
23 By: _____
24 David A. Serrano
25 Attorneys for Defendants
26 BUTA UPPAL and CANADA ROAD
27 CARRIER, LTD
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